

1 Roger Wiley (OK Bar No. 11568)
2 **ROSETTE, LLP**
3 P.O. Box 1667
4 McAlester, OK 74502
5 Tel: (480) 242-4570
6 Fax: (480) 889-8997
7 Email: rwiley@rosettela.com

8 *Attorney for Plaintiff*
9 **THE OSAGE NATION**

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF OKLAHOMA**

12 1. **THE OSAGE NATION** acting
13 through the **OSAGE MINERALS**
14 **COUNCIL,**

15 Plaintiff,

16 vs.

17 1. **WIND CAPITAL GROUP, LLC**, a
18 Delaware limited liability company;
19 2. **OSAGE WIND, LLC**, a Delaware
20 limited liability company; and
21 3. **WC INVESTMENT**
22 **MANAGEMENT, LLC**, fka **WIND**
CAPITAL INVESTMENT
MANAGEMENT, LLC, aka/fka
WIND CAPITAL INVESTMENT
GROUP, LLC, a Missouri limited
liability company,

Defendants.

Case No. 11-CV-643-GKF-PJC

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiff, the Osage Nation, acting through the Osage Minerals Council, for its
2 claims and causes of action against the Wind Capital Group, LLC, Osage Wind, LLC
3 and Wind Capital Investment Management, LLC, alleges and states as follows:
4

5 **THE PARTIES, JURISDICTION, AND VENUE**

6 1. Plaintiff the Osage Nation is a federally-recognized Indian tribe located in
7 north central Oklahoma, with its principal place of business located in Osage County,
8 Oklahoma. The Osage Nation has approximately 15,600 members. The government of
9 the Osage Nation is obligated to ensure the preservation of the oil, gas, coal and/or other
10 minerals within the boundaries of the Osage Reservation as well as to protect the rights
11 of its tribal members to income derived from these minerals (the “Minerals
12 Obligations”). To that end, the Osage Nation is acting through the Osage Minerals
13 Council, a minerals management agency created under Article XV, section 4 of the
14 Constitution of the Osage Nation to discharge the Minerals Obligations, including those
15 related and necessary to mineral estate lessees. The Osage Nation, together with the
16 Osage Minerals Council, will hereinafter be referred to collectively as the “Osage
17 Nation” or “Plaintiff.”

18 2. Defendant Wind Capital Group (“WCG”) is a limited liability company
19 organized under the laws of Delaware. WCG maintains its principal place of business in
20 St. Louis, Missouri with additional offices located in Chicago, Illinois and Madison,
21 Wisconsin.
22

1 3. Defendant Osage Wind, LLC (“Osage Wind”) is a limited liability
2 company organized under the laws of Delaware. Upon information and belief, Osage
3 Wind is the owner and developer of the Osage County Wind Project, as described more
4 fully below, and is also owned and/or controlled by one or more of the other defendants
5 named herein.

6 4. Defendant WC Investment Management, LLC (“WCIM”) is a limited
7 liability company organized under the laws of Missouri. Upon information and belief,
8 WCIM was formed in Missouri in 2005 under the name Wind Capital Group, LLC.
9 Subsequently through filings with the Missouri Secretary of State’s Office, Wind Capital
10 Group, LLC changed its name to Wind Capital Investment Management, LLC, and
11 finally to WC Investment Management, LLC. Also upon information and belief, WCIM
12 continues to be known as or referred to as Wind Capital Group, LLC.

13 5. At all relevant times hereto, WCG and WCIM have shared one or more
14 members and/or organizers, including Thomas S. Carnahan. It is unknown to Plaintiff at
15 this time whether WCG and/or WCIM share one or more members and/or organizers
16 with Osage Wind. WCG, together with WCIM and Osage Wind, will be collectively
17 referred to as the “Defendants,” and are responsible for the unlawful acts described in
18 this Complaint.

19 6. This Court has jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1362, and
20 28 U.S.C. § 1367(a).

1 7. Osage Nation's request for declaratory and injunctive relief is authorized
2 by 28 U.S.C. §§ 2201, 2202.

3 8. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) because a
4 substantial part of the events giving rise to this action occurred in this federal judicial
5 district and the real property that is the subject of this dispute is located in this federal
6 judicial district.

7 **FACTUAL BACKGROUND**

8 9. Osage Nation repeats and re-alleges each of the foregoing allegations in
9 this Complaint as though fully set forth herein.

10 10. Osage Nation and its citizens are the beneficial owners of a mineral estate
11 comprised of 100% of the minerals located in and under Osage County, Oklahoma.

12 11. As the owner of all the minerals located in and under Osage County,
13 Oklahoma, Osage Nation has the right to explore, develop, remove, operate, and
14 transport the minerals within the Osage Nation mineral estate.

15 12. The revenues generated from the Osage Nation mineral estate are allocated
16 to the State, County, and members of the Nation.

17 13. The revenues generated from the Osage Nation mineral estate that are
18 distributed to members of the Nation provide essential income for Osage citizens who
19 share in the mineral revenue distributions, comprising the sole source of income for
20 some citizens of the Osage Nation.

1 14. Several million dollars in annual revenues generated from the Osage
2 Nation mineral estate are paid to the Osage County and State of Oklahoma for roads and
3 schools.

4 15. Osage Nation has entered into lease agreements with certain energy
5 companies for the purpose of exploring and developing the Osage Nation mineral estate
6 and in accordance with 25 C.F.R. § 226.19, the Osage Nation acting through the Osage
7 Minerals Council has certain Minerals Obligations and as such has the right to use so
8 much of the surface estate as may be reasonable for the exploration, development,
9 removal, operation, transportation, and marketing of the mineral estate.

10 16. The Defendants are proposing to construct, and have already taken
11 significant and affirmative steps toward constructing, a massive industrial network of
12 wind turbines, high voltage underground electric transmission lines, met towers, a
13 substation, roads, and storage yards (hereinafter referred to as “Osage County Wind
14 Project”) over and upon the Osage Nation mineral estate.

15 17. The Defendants’ Osage County Wind Project will place 94 wind turbines,
16 each approximately 400 feet in height, over and upon the surface above the Osage
17 Nation mineral estate. Each of the 94 wind turbines will require extensive digging to
18 construct deep pits containing concrete foundations similar to those required in the
19 construction of tall buildings.

1 18. The Defendants' Osage County Wind Project will place two separate "met
2 towers," each approximately 200 feet in height, over and upon the surface above the
3 Osage Nation mineral estate.

4 19. As part of Defendants' Osage County Wind Project, an extensive network
5 of high voltage electric underground transmission lines, a substation, storage yards,
6 outbuildings, and roads over and upon the surface above the Osage Nation mineral estate
7 will be constructed.

8 20. The Defendants' Osage County Wind Project will implement and mobilize
9 a large work force requiring the use of numerous pieces of heavy equipment including
10 cranes, scrapers, road graders, backhoes, and tractor trailers as well as other heavy
11 equipment over and upon the surface above the Osage Nation mineral estate.

12 21. Osage Nation is in the process of exploring and developing Osage
13 Nation's mineral estate in the area where the Defendants propose to construct their
14 Osage County Wind Project.

15 22. During the process of exploring and developing its mineral estate, Osage
16 Nation has discovered marketable amounts of oil and natural gas within the Osage
17 Nation mineral estate. Developing and marketing the natural gas will require the
18 construction of flow lines and transmission lines within the Osage Nation mineral estate.
19 The Defendants' construction and operation of the Osage County Wind Project will
20 illegally interfere with the construction, operation and maintenance of the flow lines and
21 transmission lines to the detriment of the Osage mineral estate and Osage Nation.

1 23. The Defendants' Osage County Wind Project will interfere with Osage
2 Nation's rights to the surface necessary for the exploration, development, removal,
3 operation, transportation, and marketing of the Osage Nation mineral estate.

4 **FIRST CLAIM FOR RELIEF**

5 **OSAGE NATION REQUESTS THIS COURT TO DECLARE THAT THE OSAGE**
6 **COUNTY WIND PROJECT VIOLATES FEDERAL LAW, GUARANTEEING**
7 **OSAGE NATION'S ACCESS TO THE MINERAL ESTATE AND ISSUE A**
8 **PRELIMINARY AND PERMANENT INJUNCTION ENJOINING THE**
9 **DEFENDANTS FROM COMMENCING THE OSAGE COUNTY WIND**
10 **PROJECT**
11 **(28 U.S.C. §§ 2201, 2202)**

12 24. Osage Nation repeats and re-alleges each of the foregoing allegations in
13 this Complaint as though fully set forth herein.

14 25. An actual controversy exists between Osage Nation and the Defendants in
15 that the Defendants plan to construct a massive industrial wind farm on the surface
16 above Osage Nation's mineral estate in violation of federal law.

17 26. Federal regulations governing the leasing of Osage Nation's mineral estate
18 guarantee the right to use so much of the surface above the mineral estate as may be
19 reasonable for operations and marketing. *See* 25 C.F.R. § 226.19.

20 27. The Defendants' Osage County Wind Project will interfere with the right
21 of surface access, which will in turn cause serious and immediate harm to the Osage
22 Nation, including cancelled leases, inability to attract future lessees, and the inability to
benefit fully from the mineral estate through the use of new technologies.

1 28. Absent judicial intervention, Osage Nation will suffer imminent,
2 permanent, and irreparable harm for which there is no adequate remedy at law.

3 29. This Court may grant and Osage Nation is entitled to declaratory and
4 injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

5 30. Because the construction of a massive industrial wind farm on the land
6 above Osage Nation's mineral estate will interfere with access to the mineral estate, this
7 Court should declare that the Osage County Wind Project on the surface above Osage
8 Nation's mineral estate violates federal law.

9 31. If the Defendants are permitted to construct and operate the Osage County
10 Wind Project on the land above Osage Nation's mineral estate, Osage Nation will suffer
11 great harm. In order to prevent irreparable injury, this Court should issue both
12 preliminary and permanent injunctions prohibiting the Defendants from moving forward
13 with the Osage County Wind Project.

14 **SECOND CLAIM FOR RELIEF**

15 **OSAGE NATION REQUESTS THIS COURT TO ISSUE INJUNCTIVE RELIEF**
16 **AGAINST DEFENDANTS' OSAGE COUNTY WIND PROJECT AS IT**
17 **ILLEGALLY INTERFERES WITH OSAGE NATION'S RIGHT TO DEVELOP**
 AND OPERATE ITS MINERAL ESTATE

18 32. Osage Nation repeats and re-alleges each of the foregoing allegations in
19 this Complaint as though fully set forth herein.

20 33. The right to enter land to explore for and develop minerals is an ownership
21 right. Under Oklahoma law, the surface estate is servient to the dominant mineral estate
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1 for the purpose of oil and gas development. *DuLaney v. Okla. State Dep't of Health*,
2 868 P.2d 676, 680 (Okla. 1993).

3 34. Recent advances in technology have led to the discovery of previously
4 undetected marketable amounts of oil and natural gas within the Osage Nation mineral
5 estate. Access to the surface above the mineral estate is vital to Osage Nation's ability
6 to develop and market the newly discovered oil and natural gas.

7 35. Developing and marketing the natural gas will require the construction of
8 flow lines and transmission lines within the Osage Nation mineral estate.

9 36. The Defendants' Osage County Wind Project is located on the land by
10 which the mineral estate is accessed.

11 37. The construction and placement of 94 wind turbines, met towers, high
12 voltage electric underground transmission lines, power substations, storage yards,
13 outbuildings, and roads will significantly interfere with Osage Nation's, the dominant
14 estate holders', right of access.

15 38. The Defendants' construction and operation of the Osage County Wind
16 Project will illegally interfere with the construction, operation and maintenance of the
17 flow lines and transmission lines to the detriment of the Osage mineral estate and Osage
18 Nation.

19 39. The construction and operation of the Defendants' Osage County Wind
20 Project will cause Osage Nation to suffer significant money damages in an amount so
21 substantial that Osage Nation's damages would far exceed any amount that the
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1 Defendants would be capable of paying in a suit for money damages and Osage Nation
2 is therefore without an adequate remedy at law.

3 40. Osage Nation is and will continue to be irreparably harmed if the
4 Defendants are allowed to begin construction and interfere with Osage Nation's rights
5 associated with developing its mineral estate.

6 41. Accordingly, Osage Nation requests entry of injunctive relief maintaining
7 the status quo as to Osage Nation's right to continue the exploration and development of
8 its mineral estate without interference from the Defendants.

9 WHEREFORE, Plaintiff Osage Nation requests judgment for declaratory and
10 injunctive relief in its favor as follows:

11 A. A judgment declaring that the Osage County Wind Project violates 25
12 C.F.R. § 226.19, guaranteeing Osage Nation access to the mineral estate;

13 B. Directing that the Defendants not proceed with the Osage County Wind
14 Project due to the unreasonable interference with Osage Nation's right to develop and
15 operate its mineral estate;

16 C. Enjoining the Defendants from taking any actions designed to construct or
17 operate the Osage County Wind Project or engage in any surface activities that interfere
18 with Osage Nation's dominant mineral rights;

19 D. Declaring that the construction and operation of the Defendants' Osage
20 County Wind Project on the land above Osage Nation's mineral estate will interfere with
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1 Osage Nation's access to the mineral estate and that the Osage County Wind Project
2 violates federal law;

3 E. Awarding Osage Nation its reasonable attorney fees and costs; and

4 F. Awarding all other relief as this Court deems just and equitable.

5 Respectfully Submitted,

6 ROSETTE, LLP

7
8 By /s/ Roger Wiley

Roger Wiley (OK Bar No. 11568)

14 Crooked Oak Lane

McAlester, OK 74501

(480) 242-4570

(480) 889-8997

rwiley@rosettela.com

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12 *Attorney for Plaintiff*

THE OSAGE NATION